

Office of the Secretary, Interior

§ 11.60

preliminary application. The Assessment Plan must also identify a contact from whom a complete copy of the printout of the preliminary application can be obtained.

[61 FR 20612, May 7, 1996]

§ 11.44 What does the authorized official do after the close of the comment period?

(a) The authorized official must carefully review all comments received on the Assessment Plan, provide substantive responses to all comments, and modify the Plan as appropriate. [See § 11.32(e)(2) to determine if the authorized official must provide for additional public review.]

(b) If, after reviewing the public comments, the authorized official decides to continue with the type A procedure, he or she must then perform a final application of the NRDAM/CME or NRDAM/GLE, using final data inputs and modifications based on § 11.41 and any reliable information received during the public review and comment period.

(c) After completing the final application of the NRDAM/CME or NRDAM/GLE, the authorized official must prepare a Report of Assessment. The Report of Assessment must include the printed output from the final application as well as the Preassessment Screen Determination and the Assessment Plan.

(d) If the authorized official is aware of reliable evidence that a private party has recovered damages for commercial harvests lost as a result of the release, the authorized official must eliminate from the claim any damages for such lost harvests that are included in the lost economic rent calculated by the NRDAM/CME or NRDAM/GLE.

(e) If the authorized official is aware of reliable evidence that the NRDAM/CME or NRDAM/GLE application covers resources beyond his or her trustee jurisdiction, the authorized official must either:

(1) Have the other authorized official(s) who do have trustee jurisdiction over those resources join in the type A assessment; or

(2) Eliminate any damages for those resources from the claim for damages.

(f) If the final application of the NRDAM/CME or NRDAM/GLE, adjusted as needed under paragraphs (d) and (e), calculates damages in excess of \$100,000, then the authorized official must limit the portion of his or her claim calculated with the type A procedure to \$100,000.

(g) After preparing the Report of Assessment, the authorized official must follow the steps described in subpart F.

[61 FR 20612, May 7, 1996]

Subpart E—Type B Procedures

§ 11.60 Type B assessments—general.

(a) *Purpose.* The purpose of the type B assessment is to provide alternative methodologies for conducting natural resource damage assessments in individual cases.

(b) *Steps in the type B assessment.* The type B assessment consists of three phases: § 11.61—Injury Determination; § 11.70—Quantification; and § 11.80—Damage Determination, of this part.

(c) *Completion of type B assessment.* After completion of the type B assessment, a Report of Assessment, as described in § 11.90 of this part, shall be prepared. The Report of Assessment shall include the determinations made in each phase.

(d) *Type B assessment costs.* (1) The following categories of reasonable and necessary costs may be incurred in the assessment phase of the damage assessment:

(i) Sampling, testing, and evaluation costs for injury and pathway determination;

(ii) Quantification costs (including baseline service determination and resource recoverability analysis);

(iii) Restoration and Compensation Determination Plan development costs including:

(A) Development of alternatives;

(B) Evaluation of alternatives;

(C) Potentially responsible party, agency, and public reviews;

(D) Other such costs for activities authorized by § 11.81 of this part;

(iv) Cost estimating and valuation methodology calculation costs; and

(v) Any other assessment costs authorized by §§ 11.60–11.84 of this part.

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(2) The reasonable and necessary costs for these categories shall be limited to those costs incurred or anticipated by the authorized official for, and specifically allocable to, site-specific efforts taken in the assessment of damages for a natural resource for which the agency or Indian tribe is acting as trustee. Such costs shall be supported by appropriate records and documentation, and shall not reflect regular activities performed by the agency or the Indian tribe in management of the natural resource. Activities undertaken as part of the damage assessment phase shall be taken in a manner that is cost-effective, as that phrase is used in this part.

[51 FR 27725, Aug. 1, 1986, as amended at 53 FR 5175, Feb. 22, 1988; 59 FR 14283, Mar. 25, 1994]

§ 11.61 Injury determination phase—general.

(a) *Requirement.* (1) The authorized official shall, in accordance with the procedures provided in the Injury Determination phase of this part, determine: whether an injury to one or more of the natural resources has occurred; and that the injury resulted from the discharge of oil or release of a hazardous substance based upon the exposure pathway and the nature of the injury.

(2) The Injury Determination phase consists of § 11.61—general; § 11.62—injury definition; § 11.63—pathway determination; and § 11.64—testing and sampling methods, of this part.

(b) *Purpose.* The purpose of the Injury Determination phase is to ensure that only assessments involving well documented injuries resulting from the discharge of oil or release of a hazardous substance proceed through the type B assessment.

(c) *Injury Determination phase steps.* (1) The authorized official shall determine whether the potentially injured resource constitutes a surface water, ground water, air, geologic, or biological resource as defined in § 11.14 of this part. The authorized official shall then proceed in accordance with the guidance provided in the injury definition section, § 11.62 of this part, to determine if the resource is injured.

(2) The authorized official shall follow the guidance provided in the test-

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ing and sampling methods section, § 11.64 of this part, in selecting the methodology for determining injury. The authorized official shall select from available testing and sampling procedures one or more procedures that meet the requirements of the selected methodologies.

(3) The authorized official shall follow the guidance provided in the pathway section, § 11.63 of this part, to determine the route through which the oil or hazardous substance is or was transported from the source of the discharge or release to the injured resource.

(4) If more than one resource, as defined in § 11.14(z) of this part, has potentially been injured, an injury determination for each resource shall be made in accordance with the guidance provided in each section of the Injury Determination phase.

(d) *Selection of methodologies.* (1) One of the methodologies provided in § 11.64 of this part for the potentially injured resource, or one that meets the acceptance criteria provided for that resource, shall be used to establish injury.

(2) Selection of the methodologies for the Injury Determination phase shall be based upon cost-effectiveness as that phrase is used in this part.

(e) *Completion of Injury Determination phase.* (1) Upon completion of the Injury Determination phase, the Assessment Plan shall be reviewed in accordance with the requirements of § 11.32(f) of this part.

(2) When the authorized official has determined that one or more of the natural resources has been injured as a result of the discharge or release, the authorized official may proceed to the Quantification and the Damage Determination phases.

(3) When the authorized official has determined that an injury has not occurred to at least one of the natural resources or that an injury has occurred but that the injury cannot be linked to the discharge or release, the authorized official shall not pursue further assessment under this part.